

AWARD

FINRA Office of DISPUTE RESOLUTION

CASE #: [REDACTED]

[REDACTED] (Claimant) vs. Edward Jones and Securities America, Inc.
(Respondents)

REPRESENTATION OF PARTIES:

For Claimant [REDACTED]: Tochter Kennedy, Esq., and Owen Harnett, Esq., AdvisorLaw, LLC, Broomfield, Colorado.

For Respondent Edward Jones: Darren Goodman, Esq., Edward Jones, St. Louis, Missouri.

For Respondent Securities America, Inc. (Securities America): Chad Weaver, Esq., Freeman Mathis & Gary, LLP, Hermosa Beach, California.

NATURE OF DISPUTE: Associated Person vs. Members

Statement of Claim filed on or about: October 4, 2016.

Amended Statement of Claim filed on or about: April 3, 2017.

CASE SUMMARY: In the Statement of Claim, Claimant asserted a claim seeking expungement of customer dispute occurrence numbers [REDACTED] and [REDACTED] (“Underlying Claims”) from his Central Registration Depository (“CRD”) records.

In the Amended Statement of Claim, Claimant removed one of the expungement requests, dismissed Respondent Securities America, and requested expungement of only customer dispute occurrence number [REDACTED] (“Underlying Occurrence”) from his CRD record.

RELIEF REQUESTED:

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Claims from his CRD record pursuant to FINRA Rule 2080(b)(1)(A) as the claim, allegation or information is factually impossible or clearly erroneous;
2. Expungement of the Underlying Claims from his CRD record pursuant to FINRA Rule 2080(b)(1)(C) as the claim, allegation or information is false;
3. An award of damages in the amount of \$1.00 from Respondents Edward Jones and Securities America for their part in contributing to Claimant’s injury; and
4. Any and all other relief that the Arbitrator deems just and equitable.

In the Amended Statement of Claim, Claimant requested:

1. Expungement of the Underlying Occurrence from his CRD record pursuant to FINRA Rule 2080(b)(1)(A), as the claim, allegation or information is factually impossible or clearly erroneous;
2. Expungement of the Underlying Occurrence from his CRD record pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation or information is false;

3. An award of damages in the amount of \$1.00 from Respondent Edward Jones for its part in contributing to Claimant's injury; and
4. Any and all other relief that the Arbitrator deems just and equitable.

AWARD: The Arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The Arbitrator recommends the expungement of all references occurrence number [REDACTED], from registration records maintained by the CRD, for Claimant [REDACTED] (CRD# [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, Claimant [REDACTED] must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 13805 of the Code of Arbitration Procedure, the Arbitrator has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and

The claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 findings based on the following reasons:

Respondent Edward Jones took no position on Claimant's expungement request. Additionally, there is no evidence from the customer in the Underlying Occurrence (the "Customer") that Claimant had anything to do with her taking out a reverse mortgage. Finally, this expungement will have no material adverse effect on investor protection, the integrity of the CRD system, or regulatory requirements.

The controversial reference in Claimant's CRD records arose from the Customer's written complaint addressed to FINRA Investor Complaint Center dated April 27, 2009 ("Complaint") alleging that that she was advised in February of 2007 by the Claimant to take a \$150,000.00 withdrawal from her Wells Fargo reverse mortgage line of credit and invest all of the funds in stock mutual funds. Subsequently, she allegedly learned that these investments were not appropriate for an 80 year old. As the value of the funds had lost half of their value by December of 2008, she sought restitution such that the losses be refunded to her.

Back in February of 2007, the Customer told Claimant that she wanted additional income from her assets each month according to her first sentence in her Complaint. The Arbitrator finds that Claimant had nothing to do with the Customer obtaining a reverse mortgage on her home. Claimant both testified that he had no knowledge of same and alleged same in his Amended Statement of Claim and the Customer offered no evidence to prove same. The Customer in her Complaint alleged that

Claimant himself contacted Wells Fargo by phone with her on February 15, 2007 to withdraw \$150,000.00 from her reverse mortgage line of credit, even though Exhibit 3 to the Amended Statement of Claim is a copy of her own fax dated February 15, 2007 from a 213 phone number requesting the \$150,000.00 withdrawal from Wells Fargo and transfer to her Bank of America account. Claimant and the Customer met a few times to reach an agreement as to how this \$150,000.00 would be invested and Claimant took notes regarding their meetings and reflected same. He proposed to her the concept of fixed annuities but she declined. He then recommended investing the proceeds into a mix of Templeton Mutual Funds to supplement those she already owned and they allocated them together. Based on what the Customer's net worth was at the time, excluding her primary residence which was worth \$650,000.00, he recommended the purchase of the Franklin Templeton Funds. He felt that this was suitable given the broad diversification and professional management that the Customer had received from Franklin Templeton. In addition, they provided growth and income potential. His rationale was to use the growth and income potential offered by this particular mix of mutual funds to potentially offset the systematic liquidations necessary for the Customer's income needs at that time. Claimant could not generate the Customer's desired cash flows with pure income investments at that time. The \$150,000.00 represented 23% of her net worth and no single fund represented more than 5.4% of her net worth. Claimant bought her Class A shares in the six different funds that were very liquid with no transaction costs for withdrawals or deferred sales charges. She also obtained a lower mutual funds sales charge due to hitting the \$100,000.00 breakpoint. Claimant made it clear to the Customer that there were no guarantees regarding performance of the funds. Claimant's plan was to provide her income that she would not outlive when combined with the other assets she held such as an annuity. Claimant provided her with the prospectuses for the funds, copies of the funds fact sheets, and trade confirmations. Claimant never exercised discretionary authority over her account at any time. In fact, Respondent Edward Jones does not permit same. The Customer received regular statements reflecting her holdings. She and Claimant discussed the risks involved with being in the market on multiple occasions as well as with investing mortgage proceeds in the market. He also cautioned her about the size of her withdrawals and felt that she fully understood the risk involved with the funds and how the principal could be impacted. His contact and activity notes provided all the details for each phone call or meeting Claimant had with the Customer. These facts are set forth in Exhibit 1 to Claimant's Amended Statement of Claim, Claimant's letter dated October 20, 2009 to Laura Hartt, Principal Examiner at FINRA, in which he addresses all issues raised in the Complaint. He confirmed many of these facts under oath during the telephonic hearing.

On October 22, 2009, after conducting a thorough investigation, Respondent Edward Jones denied the Customer's claim, finding that Claimant had not recommended the reverse mortgage nor referred the Customer to Wells Fargo. Further, the Franklin Templeton investments were undertaken after Claimant's discussions with the Customer and provision of all required information and disclosures of risks at the time of the purchase as well as those associated with the Customer's monthly withdrawals.

The Customer was served with the Statement of Claim (Claimant's Amended Statement of Claim although not served on the Customer simply removed all allegations and claims related another complaint that had nothing to do with the Complaint) in February of 2017, and she did not come forward to testify or intervene in these proceedings. The firm denied her claim as stated in the BrokerCheck[®] Report.

It must be noted that on October 9, 2007, the Dow Jones hit an all-time high but by March of 2009, the Dow had lost nearly 54% (Exhibit 5 to Amended Statement of Claim). The Customer transferred the account from Claimant by December of 2008.

To the extent that the Arbitrator has missed any information required for this expungement recommendation, it is her intention to expunge all traces of the above-referenced customer complaint Respondent Edward Jones reported on Claimant's U4 form and BrokerCheck[®] report.

2. All other relief requests are denied.

OTHER ISSUES: The Arbitrator acknowledges that she has read the pleadings and other materials filed by the parties.

Neither Respondent Securities America, nor Respondent Edward Jones opposed Claimant's request for expungement.

On February 2, 2017, Claimant filed a copy of a letter from Claimant's counsel to the Customer with copies of the Case Information Sheet, Statement of Claim, and Initial Pre-Hearing Conference Scheduling Order setting the date for the expungement hearing.

On April 4, 2017, Claimant filed a motion to amend the Statement of Claim to remove Respondent Securities America from the matter, and remove the request for expungement of occurrence number [REDACTED]. Neither Respondent Edward Jones nor Respondent Securities America opposed the request. On April 17, 2017, the Arbitrator granted Claimant's motion to amend the Statement of Claim.

The Arbitrator conducted a recorded telephonic hearing on April 24, 2017 so the parties could present oral argument and evidence on Claimant's request for expungement. The Customer did not appear at the expungement hearing.

During the expungement hearing, Claimant withdrew the request for \$1.00 in damages.

The Arbitrator reviewed Claimant's BrokerCheck[®] Report. The Arbitrator notes that the Customer did not pursue the complaint in arbitration or court; accordingly, there is no settlement document to review as the customer complaint was denied by the firm without further action by the Customer.

The Arbitrator noted that Claimant did not previously file a claim requesting expungement of same disclosure.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: all of the pleadings and exhibits thereto, the sworn testimony of Claimant, and the submissions and arguments of counsel for Claimant and Respondent Edward Jones during the April 24, 2017 expungement hearing.

OTHER FEES: Respondents Securities America and Edward Jones have each paid to FINRA Office of Dispute Resolution the \$150.00 Member Surcharge previously invoiced.

FINRA Office of Dispute Resolution assessed a filing fee* for each claim:
Initial Claim Filing Fee = \$ 50.00

**The filing fee is made up of a non-refundable and a refundable portion.*

The Arbitrator has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with the Arbitrator @ \$50.00/session = \$ 50.00
Pre-hearing conference: January 30, 2017 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing Date: April 24, 2017 1 session

Total Hearing Session Fees = \$100.00

The Arbitrator has assessed \$100.00 of the hearing session fees to Claimant.

All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.

ARBITRATOR

Constance Ellen Boukidis

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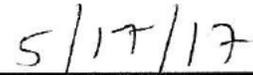
Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument which is my award.

Arbitrator's Signature



Constance Ellen Boukidis
Sole Public Arbitrator



Signature Date

May 18, 2017

Date of Service (For FINRA-ODR office use only)